

## **GNSO gTLD Registries Stakeholder Group Comments**

### **Issue:**

#### **Preliminary Issue Report on The Current State of the Uniform Dispute Resolution Policy**

Date: 13 July 2011

Issue Document URL: <http://www.icann.org/en/public-comment/prelim-report-udrp-27may11-en.htm>

These comments on the issue noted above are submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The comments that follow represent a consensus position of the RySG as further detailed at the end of the document. The RySG comments were arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

As the Preliminary Issue Report (Report) on the Uniform Dispute Resolution Policy (UDRP) itself acknowledges, the UDRP has been in effect for over 10 years, and, although it is widely recognized as one of ICANN's defining accomplishments from its formative years, it is not perfect.

The RySG is cognisant that the GNSO motion requesting an issue report was derived from the Registration Abuse Policies Working Group (RAP WG) recommendations. Recommendation #1 of the RAP WG, which received unanimous consensus, recommended the initiation of a Policy Development Process by requesting an Issues Report to investigate the current state of the UDRP.

Mindful of the above background, the RySG would like to record the following comments:

1. It is a matter of best practice to review all policies that have been in place for a substantial length of time (over 10 years in this case); this seems even more important in the case of a consensus policy like the UDRP.
2. Recommendations of a WG, and even more so those with unanimous WG support, should be taken up and acted upon in a manner that is substantially consistent with such recommendations OR, on occasion and with very good reason, referred back to the WG.

On the basis of the above, we believe that the UDRP should be reviewed and that a PDP is the appropriate ICANN process for such a review.

We are mindful of the pragmatic alternative approach put forward by staff in the Report. Unfortunately, based on our understanding, the alternative approach would not involve a PDP and the only way consensus policies should be changed, even if only regarding process issues, is via a PDP<sup>1</sup>. In addition, as the Report contains a number of items that would impact implementation of the UDRP by ICANN's contracted parties, the only way to change some items in a fashion that must be implemented, is through a PDP.

Staff concluded that many issues with the UDRP relate to *process* issues associated with the *implementation* of the UDRP, rather than the language of the policy itself. The GNSO Council should therefore consider initiating a PDP to consider just the process issues at this time. If such a PDP

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<sup>1</sup> See <http://www.icann.org/en/gnsso/issue-reports/udrp-review-report-01aug03.htm> which states: "Note: the UDRP is a consensus policy, and should be revised only by consensus."

could benefit by convening a small group of experts to produce recommendations to improve the *process or implementation* of the UDRP policy as an initial step, we support that if it can be done in a cost effective manner. Still, convening a small group of “experts” (however “experts” may be interpreted by the GNSO Council), cannot be a substitute for the bottom-up policy development process that is the backbone and foundation of ICANN. The last time a group of experts was convened, the Implementation Review Team for the new gTLD process, it was not met with supportive enthusiasm from the bulk of the ICANN community, and the RySG does not believe that that should be repeated here.

Finally, the RySG takes issue with the statement (in fact headline) in the Report that “a PDP on the UDRP may undermine its effectiveness.” How is it possible that convening a Working Group through the processes set forth in the ICANN Bylaws itself could undermine its effectiveness? If it were true that simply commencing a policy development process on an existing policy could undermine that very policy, then the ICANN community would never be in a position to review any policy once that policy was implemented. We do not agree with such an argument.

### **RySG Level of Support**

#### **1. Level of Support of Active Members: Supermajority**

- 1.1. # of Members in Favor: 12
- 1.2. # of Members Opposed: 0
- 1.3. # of Members that Abstained: 0
- 1.4. # of Members that did not vote: 1

#### **2. Minority Position(s): N/A**

### **General RySG Information**

- Total # of eligible RySG Members<sup>2</sup>: 15
- Total # of RySG Members: 13
- Total # of Active RySG Members<sup>3</sup>: 13
- Minimum requirement for supermajority of Active Members: 9
- Minimum requirement for majority of Active Members: 7
- # of Members that participated in this process: 13

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<sup>2</sup> All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (RySG Articles of Operation, Article III, Membership, ¶ 1). The RySG Articles of Operation can be found at <<http://gns0.icann.org/files/gns0/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf>>.

<sup>3</sup> Per the RySG Articles of Operation, Article III, Membership, ¶ 6: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a RySG meeting or voting process for a total of three consecutive meetings or voting processes or both. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a RySG meeting or by voting.

- Names of Members that participated in this process: 13
  1. Afiliat (.info & .mobi)
  2. DotAsia Organisation (.asia)
  3. DotCooperation (.coop)
  4. Employ Media (.jobs)
  5. Fundació puntCAT (.cat)
  6. Museum Domain Management Association – MuseDoma (.museum)
  7. NeuStar (.biz)
  8. Public Interest Registry - PIR (.org)
  9. RegistryPro (.pro)
  10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
  11. Telnic (.tel)
  12. Tralliance Registry Management Company (TRMC) (.travel)
  13. VeriSign (.com, .name, & .net)
  
- Names & email addresses for points of contact
  - Chair: David Maher, [dmaher@pir.org](mailto:dmaher@pir.org)
  - Vice Chair: Keith Drazek, [kdrazek@verisign.com](mailto:kdrazek@verisign.com)
  - Secretariat: Cherie Stubbs, [Cherstubbs@aol.com](mailto:Cherstubbs@aol.com)
  - RySG representative for this statement: Jonathan Robinson, [jonathan.robinson@ipracon.com](mailto:jonathan.robinson@ipracon.com)